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**SYMPOSIUM ON RELIGIOUS LAW: ROMAN CATHOLIC,
ISLAMIC, AND JEWISH TREATMENT OF FAMILIAL ISSUES,
INCLUDING EDUCATION, ABORTION, *IN VITRO*
FERTILIZATION, PRENUPTIAL AGREEMENTS,
CONTRACEPTION, AND MARITAL FRAUD**

Symposium on Religious Law: Roman Catholic, Islamic, and Jewish Treatment of Familial Issues, Including Education, Abortion, *In Vitro* Fertilization, Prenuptial Agreements, Contraception, and Marital Fraud

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I. INTRODUCTION

MICHAEL R. MOODIE, S.J.*

To function as a vital force in the life of a society, a system of law must express those values considered fundamental to the society's continued existence. Thomas Aquinas, when considering the nature of law and the appropriate object of legislation, emphasized the essential link between morality and law: whereas law expresses a moral judgment, and some actions support or do not support the good of society, not all morality is enacted into law. Rather, only those values central to the life of the society and the welfare of its citizens play a part.

A study of comparative law discloses the variety of fundamental values in diverse legal systems. The contrast between varying legal values helps delineate the underlying values and themes in one's own legal matrix—values and themes often difficult to perceive because of the proximity of one's perspective. In an increas-

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ingly interrelated world, an appreciation of competing values may increase opportunities for mutual understanding, cooperation, and respect.

This symposium offers perspectives from three religious law traditions: Roman Catholicism, Islam, and Judaism. Each of the three legal traditions offers a comprehensive, normative system that translates doctrine into practice and religious values into concrete directives. While the place of theological law differs in the respective religious bodies, each body asserts a binding authority over its confessional members.

In preparing the symposium, the editors adopted a format of responses to specific fact patterns that raise pertinent issues in familial life. These fact patterns were presented to legal writers from the three traditions, who were then asked to respond to the situations within the context of their own religious law. It is interesting to note that not only do the authors' conclusions differ on each subject, but so do their underlying beliefs about the pertinent issues raised by the fact patterns. Our laws express values that are rooted in religious doctrine and belief; as the beliefs differ, so do their concrete expressions in the law.

The editors wish to acknowledge and thank Gerald T. McLaughlin, Dean of Loyola Law School, for both suggesting the topic of the symposium and assisting in its development. It is through such comparative studies that jurists may more thoroughly understand the manifold contributions of religious legal systems to American law and the particular religious values that provide the basis for American legal thought.

II. DUTY TO EDUCATE—FACT PATTERN

Part A

Fred and Ethel are a married couple living in rural Ruritania. They are wealthy farmers, as were their parents before them. They have a child named Johnny, who is lovingly raised by them.

Ruritania provides free education for every citizen; however, education is not compulsory. Neither Fred nor Ethel were formally educated, so they see no reason for Johnny to receive a formal education. They consider no other future for Johnny other than farming. Therefore, they do not allow him to obtain a formal education, even though Johnny appears bright and says that he wants to go to school and learn.

Later, when Johnny reaches adulthood, he has his intelligence tested. He is discovered to be a near genius in natural ability. No university, however, will take this unschooled young man. He is now locked into a farming career, as his options have been narrowed significantly by his lack of formal education. Johnny is so unhappy with his situation that he wishes to sue his parents for a breach of the duty to educate him. He comes to you to inquire whether your laws can help him. His parents desire the same advice.

Part B

David and Mary share the same religious faith and are actively committed to it. As their children approach school age, however, David and Mary become increasingly concerned about the moral environment the children will find in school. They agree that no social environment is value-free, and that the public school system fosters an environment of moral relativism repugnant to them. They consider this environment to constitute a secular religion that contradicts their own faith.

David and Mary also believe they have the fundamental right to choose the educational environment of their children, as they, not the state, are primarily responsible for their children's welfare. David and Mary conclude that their tax money spent on education should be allocated to the school of their choice. For the state to refuse to allocate funds to the school of their choice would be tantamount to establishing a secular religion and thus denying individuals the free exercise of their own. They plan to bring suit and desire your advice.

AZIZAH Y. AL-HIBRI*

This problem involves at least four issues relevant to Islamic law: (1) the Islamic position on education; (2) the obligation of parents to educate their children; (3) the nature of relations within the Muslim family; and (4) available remedies against one's parents.

Part A

1. The Islamic Position on Education

Prophet Muhammad, who carried the message of Islam, was illiterate. The first divine word revealed to him was the imperative: "Read."¹ The rest of the *Qur'an* is replete with verses that emphasize the importance of the pursuit of knowledge. For example, the *Qur'an* exhorts Muslims to ask God to increase their knowledge.² It underscores the importance of knowledge: "God elevates by several degrees the ranks of those of you who believe and those who have knowledge."³ The *Qur'an* even asks rhetorically in one passage, "Say, are those two equal: those who know and those who do not know?"⁴

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1. The first part of the *surah* says in full: "Read in the name of God the Creator. God created the human being from a [mere] clinging clot. Read and God is the most noble, who taught with the pen. He taught the human being what that being did not know." QUR'AN XCVI:1-5 (A. Yusuf Ali trans., 1983). Although the author generally relies on this translated version of the *Qur'an*, the translation was modified whenever the author deemed it appropriate.

2. *Id.* at XX:114.

3. *Id.* at LVIII:11.

4. *Id.* at XXXIX:9.

The Prophet himself emphasized the importance of knowledge and education. Because his statements (the *Hadith*) are an important source of Islamic jurisprudence, second only to the *Qur'an*, they are a useful guide on this subject. The most famous statements are the following: "Scholars are the heirs of prophets";⁵ "all that is in heaven and earth asks God's forgiveness for a scholar";⁶ "pursuit of knowledge is the duty of every Muslim";⁷ and "pursue knowledge even if you have to go as far as China."⁸

Many Islamic jurists viewed education as either completely or practically compulsory based on an *ayah* (*Qur'anic* verse) that states: "[T]hose who conceal [from people] the clear Signs and Guidance which we revealed, after we have made them clear to people in the Book [the *Qur'an*], shall be cursed by God and others who [are entitled to] curse."⁹

Imam al-Shafi'i, an important ninth-century jurist, went so far as to argue that if the inhabitants of one of the provinces of a Muslim state unanimously agree to abandon learning, it is the duty of the ruler to force them to pursue it.¹⁰

In the case of Fred and Ethel, we have a different scenario: an individual situation involving two parents refusing to educate their child, Johnny. Al-Qabisi, a prominent tenth-century jurist, noted that, if parents are financially unable to educate their children, the

5. 1 ABU ABD ALLAH AL-BUKHARI, *SAHIH* 25 (Istanbul n.d.) (ninth century).

6. 1 ABU ABDULLAH IBN MAJAH, *SUNAN IBN MAJAH* 81 (Muhammad Abd al-Baqi ed., Cairo n.d.) (ninth century).

7. *Id.*

8. 1 MUHAMMAD NASIR AL-DIN AL-ALBANI, *SILSILAT AL-AHADITH AL-DA'IFAH WA AL-MAWDU'AH* 413 (expanded 4th ed. Beirut 1977) (1959). This *Hadith* is viewed by major scholars as weak, i.e., its attribution to the Prophet has not been satisfactorily established. It is, nevertheless, important to include here, if only because of the popularity of this *Hadith* among the Muslim masses. Indeed, it is the first *Hadith* they are likely to quote on the subject. Thus, the impact of this *Hadith*, despite its weakness, on the consciousness of Muslims throughout the Ages has been quite significant. This fact makes it specially deserving of mention in this paragraph, especially because it is consistent with the *Qur'an* and the authenticated *Hadith*.

9. *QUR'AN*, *supra* note 1, at II:159. Many modern scholars have discussed this topic and concluded that education in Islam is compulsory. See, e.g., 1 ABD ALLAH 'ULWAN, *TARBIYAT AL-AWLAD FI AL-ISLAM* 257-58 (expanded 3d ed. Beirut 1981); MUHAMMAD ATTIYAH AL-IBRASHI, *AL-TARBIYAH AL-ISLAMIYAH WA-FALSAFATUHA* 53-59 (3d ed. Cairo 1975) (arguing that education of the public is practically compulsory in Islam); MAJID AL-KILANI, *TATAWWUR MAFHUM AL-AZARIYAH AL-TARBIYAH AL-ISLAMIYAH* 64, 93 (expanded 2d ed. Beirut 1985). For an overview of the Islamic position on education and learning, see generally AHMAD BIN SHU'AYB AL-NASA'I, *KITAB AL-'ILM* (Va. 1993) (ninth century).

10. AL-KILANI, *supra* note 9, at 93 (quoting al-Bayhaqi on the matter).

community must pay to educate them instead.¹¹ This is not the situation here, as Fred and Ethel are financially able and the education in Ruritania is also free. Therefore, we must look further into the matter.

2. The Obligation of Parents To Educate Their Children

Many jurists interpreted the *Qur'anic* injunction: "O ye who believe! Save yourselves and your families from a fire. . . ."¹² as an injunction to educate their children.¹³ This interpretation was bolstered by other *Qur'anic* verses and the Prophet's own statements. Primary among the latter is the following: "Each of you is a shepherd and each is responsible for your flock."¹⁴

The underlying reasoning is as follows: because parents are the ones who are primarily responsible for the proper upbringing of their children (they are the shepherds), then educating the children properly would teach them the difference between right and wrong and would thus protect them and their parents¹⁵ from hell.

Ibn al-Qayyim, an influential fourteenth century jurist, addressed this issue in some detail. He quoted other jurists as saying that, on Judgment Day, God will ask the parent about the child before asking the child about the parent. He reasons that this is because children have rights against their parents, just as parents have rights against their children. Al-Qayyim concludes that parents who neglect teaching their children that which is of benefit to them and let the children go to waste will have committed a grave wrong in the eyes of God.¹⁶

11. AHMAD AL-AJWANI, *AL-TARBIYAH FI AL-ISLAM* 103 (Cairo n.d.) (the author approximates the date of the Cairo version to be 1980, although the source itself contains no date).

12. *QUR'AN*, *supra* note 1, at LXVI:5. The rest of the *ayah* describes the fire as being fueled by men (who have committed wrongs) and stones. It also describes the angels that are appointed over it.

13. See, e.g., ABD AL-FATTAH FUAD, *FI AL-'USUL AL-FALSAFIYAH LIL-TARBIYAH 'IND MUFAKKIRI AL-ISLAM* 112-13 (Alexandria 1983) (also quoting Ibn al-Qayyim's views on the rights of children against their parents for a proper education). See also MUHAMMAD SUWAYD, *MANHAJ AL-TARBIYAH AL-NABAWIYAH LIL-TIFL* 25-27 (expanded 2d ed. Kuwait 1988).

14. AL-BUKHARI, *supra* note 5, at 215.

15. The parents would go to hell for failing to educate their children, because they are charged with the children's upbringing.

16. For a similar discussion of al-Qayyim's views on this subject, see SUWAYD, *supra* note 13, at 27. See also FUAD, *supra* note 13, at 112-15.

Still, generally, if parents refuse to educate their children, the Muslim ruler must educate the parents regarding their Islamic duty to educate their own children, and must inform them of the gravity of the consequences of their actions in the eyes of God. She may even impose upon them a suitable form of penalty or punishment until they mend their ways.¹⁷ Such penalty or punishment is permissible as long as it is consistent with the text and general spirit of the *Qur'an* and the authenticated *Hadith*.

By opting for a noncompulsory system of education, it appears that Ruritania has chosen not to impose such a temporal penalty or punishment for actions by parents like Fred and Ethel. This view leads to the conclusion that Johnny is limited to a remedy in the afterlife. Such a conclusion is unwarranted, however, because Ruritania has clearly made available its courts for suits by individuals like Johnny. The possible penalties and punishments for behavior like that of Fred and Ethel are perhaps specified in Ruritania's tort laws, among others. Furthermore, the fact that any punishment or penalty against the parents must be decided by going through the court system is very much in accord with the Islamic principles of democracy and justice, although it puts the burden of initiating the suit on Johnny.¹⁸ As we will see later, this burden raises for Johnny other religiously significant issues that he must consider before reaching a final decision about bringing suit against his parents.

3. The Nature of Relations Within the Muslim Family

According to the *Qur'an*, God created humans from a single *nafs* (soul) and made from this *nafs* a mate so that the mate can dwell in tranquility with that *nafs*.¹⁹ In another passage, the *Qur'an* says: "And among His Signs is that He created for you, from your own *anfus* [plural of *nafs*], mates so that you may dwell in tranquility with them, and has put between you affection and

17. This kind of punishment that a Muslim ruler may impose is a form of *Ta'zir* (a category that includes all those temporal punishments not specifically referred to in the *Qur'an* and that do not fall into two other categories discussed by jurists: *Hudud* and *Qisas*). Cf. AL-AHWANI, *supra* note 11, at 103 (quoting al-Qabisi, who argues that the ruler may pressure the parents but may not force them). The Shafi'i point of view, discussed earlier, is closer to *Qur'anic* and prophetic teachings on the central place of learning in Islam. Therefore, it represents the better view.

18. For more on this point, see generally Azizah al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 CASE W. RES. J. INT'L L. 1 (1992).

19. *QUR'AN*, *supra* note 1, at VII:189.

mercy."²⁰ Thus, the relationship within the family, which is primarily defined by the relationship between the parents, is one of affection and mercy, not of conflict or hostility.

As stated earlier, each of the parents and children have rights, duties, and obligations with respect to each other. Among the basic rights of children are the right to life, the right to legitimacy and good name, the right to equal treatment regardless of gender, the right to maintenance and health care, and the right to religious training and a good education.²¹

Among the basic obligations of Muslim children towards their parents are the obligation to love and honor them, especially in their old age, and the obligation to obey them, *except when they stray from the straight path*. The *Qur'an* enjoins the children to consort with their parents in kindness, show humility, and ask God to forgive them.²²

When asked by a Muslim, "Who deserves my companionship most?," the Prophet answered, "Your mother, your mother, your mother, then your father."²³ When a Muslim immigrated expressly for the purpose of joining other Muslims in defending Islam, the Prophet asked him, "Did you obtain your parents' permission?" The immigrant indicated that he had not. The Prophet then told him to go back and obtain the parents' permission. He added that if the parents refused to grant it, then the man should be a dutiful son and stay with them.²⁴

Another less reliable *Hadith* states that the child who pleases his parents will have both doors of Heaven open to him, whereas the child who angers them will have both doors of Hell open to him.²⁵ This *Hadith* is not unusual, except that it goes on to state that this is the case even if the parents were unjust. Al-Ghazali

20. *Id.* at XXX:21.

21. ABDEL RAHIM OMRAN, FAMILY PLANNING IN THE LEGACY OF ISLAM 30-39 (1992). This is an excellent English-language work. The author's discussion is clear and concise, and all quotes and cites from the *Qur'an* and *Hadith* have been authenticated by a committee of distinguished scholars at al-Azhar.

22. *QUR'AN*, *supra* note 1, at IV:36, XVII:23-24, LXXI:28.

23. 7 AL-BUKHARI, *supra* note 5, at 69.

24. 9 ABU BAKR AL-BAYHAQI, AL-SUNAN AL-KUBRA (Beirut 1935) (eleventh century).

25. 2 ABU HAMID AL-GHAZALI, 'IHYA' 'ULUM AL-DIN 216 (Cairo 1939) (twelfth century).

points out that this *Hadith* is weak in its attribution to the Prophet.²⁶ His comment is not insignificant for our purposes here.

Many *Qur'anic* verses, as well as passages in the *Hadith*, require children to exhibit a spirit of affection and humility towards their parents, even in instances where the parents are clearly in the wrong. But the *Qur'an* does permit dutiful children to disobey their parents' wishes if the parents go astray. Therefore, the better view on parental disobedience is that, even if the parents act unjustly, the children must still treat them kindly, yet the children are not obligated to accept or participate in the injustice.

In fact, the children are likely to have a positive duty to eliminate the injustice created by their parents. First, several *Qur'anic* verses make it the collective responsibility of all Muslims to enjoin the right, prohibit the wrong, and advance the cause of justice.²⁷ Second, by righting their parents' wrongs and asking God to forgive the parents, dutiful children are mitigating the consequences of their parents' unjust acts and improving their parents' chances for forgiveness.

4. Available Remedies

In the instant case, Fred and Ethel clearly violated their religious obligation to educate Johnny. But the violation was not committed with malice; they simply made a terrible mistake in judgment and did not know any better. Indeed, one wonders why Fred and Ethel were not educated by their own parents. Under these circumstances, the Muslim community in Ruritania should have discussed the matter with Fred and Ethel and explained the Islamic position on education, urging them to educate Johnny. In the absence of such communal advice, they did their best.

Still, Johnny is in the position of a seriously wronged child and does not have to accept this gross injustice. Therefore, he should find an institution that will educate him, even at this late date. With his exceptional natural abilities, Johnny may be able to catch up with the others quickly. If free state education is no longer available to him at this point, his parents are obligated to pay for a private tutor or some other adequate remedial alternative. In fact, I would advise them to do so if they want to meet God with a clear conscience.

26. *Id.*

27. *QUR'AN*, *supra* note 1, at III:104, XVI:90-92.

On the other hand, Johnny's idea of suing his parents runs counter to the Muslim understanding of family relations. There is no indication in the facts of any malice or willful violation by the parents. Furthermore, it is not clear what Johnny would achieve by suing. Any willingness by his parents to spend money to educate him would represent a significant attempt to correct the prior unintentional injustice.

If Johnny's parents refuse to right their wrong, the Muslim community should educate them about their Islamic duty to educate their offspring and encourage them to fulfill it. If the parents persist in their refusal, then Johnny can sue his parents because their continued refusal to educate Johnny and to financially support his remedial education, in the face of a religious imperative to do so, rises to such a level of willful injustice that Johnny is entitled to sue. Yet, such a course of action should be undertaken with an eye to fair settlement.

It is important to note that, if Johnny simply wants to punish his parents for their serious past error, his action contradicts the Islamic spirit of kindness and humility with respect to one's parents, even when they are wrong. Further, if he is attempting to sue in order to obtain damages for lost opportunities, then his actions may again represent a conflict-oriented view of the family which is foreign to Islam. This depends on the equities in the case determined in light of Johnny's continued potential to produce and other relevant circumstances. In the absence of unusual circumstances, the better alternative would be for Johnny to trust in God and immediately start the long road of educating himself. God will reward him for his kindness to his parents, perhaps in this life, and most certainly in the afterlife.

Part B

This question poses the issue of educating a Muslim in the public school system of a non-Muslim state. As such, it involves the developing Islamic jurisprudence *Fiqh al-Aqalliyyat*, which derives special rules for Muslims living in non-Muslim countries, taking into account their special circumstances.

Whether David and Mary have a basis for their suit is really a matter of American constitutional law. From the Islamic perspective, if an adequate basis does indeed exist, then they should certainly bring suit in order to fulfill their duty of ensuring that their

children get the best possible education. In Islam, such an education carefully balances temporal knowledge with spiritual and moral education.

If the case appears to be constitutionally viable, then David and Mary should contact other Muslims, People of the Book (mainly Christians and Jews), as well as other Americans who may share a similar position. I would recommend that they consider the possibility of these other individuals joining them in the suit to give the suit a broader base and a greater chance of success.

On the other hand, if the suit by David and Mary is not viable, they should attempt to supplement their children's education through additional instruction at home. If they conclude, however, that this is useless in light of overwhelming negative influences and pressures in the local public schools, and if they cannot discover any alternative resolutions that protect their children's well-being, David and Mary ought to contemplate moving to a more suitable community in the United States. After all, the *Qur'an* clearly recognizes the efforts of those who immigrate for God's sake.²⁸ Such a move, however, should be undertaken only as a last resort because it is preferable to advance the cause of morality in one's own community.

V. PRENUPTIAL AGREEMENTS—FACT PATTERN

John and Deborah are young professionals in their early thirties. They come from different religious backgrounds. In their professional careers, both have acquired significant financial assets. After dating for several years, the couple decides to marry. Although they are sure that their love will last forever, John and Deborah are also aware that divorce does occur, and are concerned about the religious upbringing of their children as well as the considerable financial investments each has made. In consultation with an attorney, the couple is preparing to sign an agreement that would settle property disputes in the event of divorce. The agreement also indicates that they desire to have two children, the first to be raised in the religion of the father and the second in the religion of the mother.

One week before the document is ready to be signed, John begins to have serious doubts about the propriety of such an action. He is now appalled at the notion of planning for divorce while planning for marriage. He has come to question Deborah's commitment to the marriage and whether the prenuptial agreement itself precludes a legally valid marriage. He comes to you for advice.

B. Islamic Response

AZIZAH Y. AL-HIBRI*

The two areas of focus here are prenuptial agreements and agreements regarding the religious upbringing of children. Regarding the first, John and Deborah have no need for a prenuptial agreement to protect their separate financial investments. Regarding the second, the agreement is void and unenforceable on the merits.

Before starting the analysis, it should be noted that this Essay makes several assumptions. Under the given scenario, John must be the Muslim partner, because Muslim jurists unanimously agree that a Muslim woman cannot enter into a valid marriage contract with a non-Muslim.¹ Although the *Qur'an* contains no clear bar to a marriage where the prospective husband is one of the "People of the Book,"² some jurists have interpreted certain *ayahs* (verses) as imposing such a bar.³ The underlying reasoning behind this posi-

* I would like to thank Professor Peter Swisher, the T.C. Williams School of Law, and Dr. Fathi Osman, Resident Scholar at the Islamic Center of Southern California, for their valuable comments on earlier drafts of this Essay.

1. See, e.g., 4 ABD AL-RAHMAN AL-JAZIRI, *KITAB AL-FIOH 'ALA AL-MADHAHIB AL-ARBA'AH* 75-77 (Beirut 1969) (1928); 7 WIHBAH AL-ZUHAYLI, *AL-FIOH AL-ISLAMI WA ADILLATUH* 152-55 (Damascus 1984).

2. "People of the Book" is a term that refers to Christians and Jews, each of whom believes in a holy "Book" revealed by God, the God of all Abrahamic religions. Some scholars have used this term to refer to certain other religions as well.

3. See, e.g., AL-JAZIRI, *supra* note 1, at 75; al-Zuhayli, *supra* note 1, at 152. See also MUHAMMAD ABU ZAHRAH, *AL-AHWAL AL-SHAKHSIYAH* 102 (3d ed. Cairo 1957). More recently, Muslim leaders and scholars such as Hassan al-Turabi and the late Mahmoud Abu Saud have stated on different occasions that they have not found a clear bar in the *Qur'an* to such marriages, but that the bar is derived from a certain jurisprudential understanding.

tion is complex; most obviously, it involves the predominantly patriarchal nature of the institution of marriage, and the negative effect of this institution on the Muslim woman in a non-Muslim community. Muslim scholars feared that the traditional prohibition on interfaith marriages imposed by other religions (including Christianity and Judaism) upon their followers, when combined with the patriarchal nature of the marriage institution in a marriage where the husband is a non-Muslim, would result in the effective denial of the Muslim wife's right to the free exercise of her religion. To protect the Muslim woman from being denied such a basic human right, they barred her from marrying a non-Muslim altogether.⁴

Therefore, Deborah is the non-Muslim partner in this case, and her marriage to John must be based on a Muslim marriage contract for it to be recognized under Islamic law. If Deborah is either an atheist or a pagan, she cannot enter into a valid Islamic marriage contract with John. On the other hand, if she is either a Christian or a Jew, i.e., one of the "People of the Book," she can validly enter into the contract while still fully adhering to her own religion.⁵ Her rights will be similar to those of her Muslim sister, with some important exceptions.⁶ Furthermore, Deborah's right to the free exercise of her religion will be guaranteed under Islamic law, because Muslims share her belief in God and the prophets of her religion.⁷

1. Prenuptial Agreements Under Islamic Law

Under Islamic law, prenuptial agreements are superfluous because the marriage contract itself usually contains provisions specifying all legitimate conditions agreed upon by the parties, including a provision that describes the *mahr* (dowry) of the woman.⁸ Con-

4. AL-ZUHAYLI, *supra* note 1, at 152; ABU ZAHRAH, *supra* note 3, at 100.

5. AL-ZUHAYLI, *supra* note 1, at 153; AL-JAZIRI, *supra* note 1, at 76.

6. See *infra* notes 14, 17 and accompanying text (while the non-Muslim woman is entitled to the full payment of her *mahr*, there is a question as to whether she and her husband may inherit from each other). See also ABU ZAHRAH, *supra* note 3, at 105.

7. See, e.g., AL-JAZIRI, *supra* note 1, at 76; AL-ZUHAYLI, *supra* note 1, at 153.

8. See AL-ZUHAYLI, *supra* note 1, at 250-315, for a detailed discussion of *mahr*. See also AL-JAZIRI, *supra* note 1, at 94-107. Child support is determined under another part of Islamic law, and is not part of the *mahr*. ABU ZAHRAH, *supra* note 3, at 174; AL-ZUHAYLI, *supra* note 1, at 277. While it is usually preferable to indicate the *mahr* in the marriage contract, its mention may be omitted without invalidating the contract. In fact, the contract is valid even if the parties agree not to have *mahr* at all. Even so, the husband will

trary to general belief, the *mahr* is the personal property of the wife and may not be used by either her parents or her husband.⁹ Some view the *mahr* as the wife's consideration for entering into the marriage contract. Consideration is required because, for example, the wife usually undertakes a new life and new responsibilities such as childbearing, or loses the opportunity of an uninterrupted career.¹⁰

Mahr is usually divided into two parts, with only the first part due immediately upon marriage; the second part is due later, often upon divorce or the husband's death. Social custom, not religion, requires this division and defines the proportion of the first part to the second. Some women use the first part of the *mahr* to facilitate their preparations for the marriage. Others may use it as capital to start their own businesses after marriage. Therefore, such women tend to want a large first installment. In contrast, well-to-do women tend to specify a first installment of negligible, yet symbolic, value. Still, in either case, women like to have a substantial second installment of the *mahr* because they view it as security for later years.¹¹ Furthermore, under no condition is the husband entitled to a share of his wife's money, regardless of whether she brought such money into the marriage or earned it after the marriage.¹²

still be obligated to pay an appropriate *mahr*. See ABU ZAHRAH, *supra* note 3, at 169. A modern Islamic state may decide to require that every marriage contract contain a *mahr* provision to protect further the prospective wife. Such a law would supplement divine law with legislation that responds to the needs of society at that time; such supplementation is totally acceptable. For more on this subject, see Azizah Y. al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 CASE W. RES. J. INT'L L. 1, 7-9 (1992).

9. See, e.g., SUBHI MAHMASSANI, *FALSAFAT AL-TASHRI' FI AL-ISLAM* 495-96 (3d ed. Beirut 1961). See also AL-ZUHAYLI, *supra* note 1, at 251, 283; 5 ABD AL-HALIM MUHAMMAD ABU SHUQQA, *TAHRIR AL-MAR'AH FI 'ASR AL-RISALAH* 57 (Kuwait n.d.) (the author approximates the date of the Kuwaiti version to be 1992, although the source itself contains no date).

10. See, e.g., AL-ZUHAYLI, *supra* note 1, at 251; cf. ABU ZAHRAH, *supra* note 3, at 169-70 (arguing that *mahr* is not consideration, but a gift to the wife and a token of affection).

11. When Khalifah (Caliph) Omar spoke in a mosque in support of placing an upper limit on *mahr*, an old woman, recognizing the importance of *mahr* to a woman's financial security, rose in opposition. She cited the *Qur'an* as the source of a woman's right to freely specify the amount of her dowry with no upper limits. The Khalifah then withdrew his proposal and admitted his error. AL-ZUHAYLI, *supra* note 1, at 255-56; ABU HAMID AL-GHAZALI, *'IHYA' 'ULUM AL-DIN* 50 (Cairo 1939) (eleventh century). This story is often recounted by jurists as an example of true democracy in early Islam because the old woman was able to publicly contradict the Khalifah and succeed.

12. ABU ZAHRAH, *supra* note 3, at 231, 245-46; AL-ZUHAYLI, *supra* note 1, at 253; MAHMASSANI, *supra* note 9, at 495; MUHAMMAD HUSNI IBRAHIM SALIM, *HUQUQ AL-ZAWJAH FI AL-FIQH AL-ISLAMI* 221 (Cairo 1983).

The most that a husband in financial need can do is hope that his wife will freely choose to help him. Nevertheless, she is under no legal obligation to do so.

Where the marriage contract contains a *mahr* provision, the provision must state the exact amount of money or sufficiently describe the property promised to the wife as first and second installments.¹³ Promising as a second installment "half of all of the husband's possessions at the time such installment is due" would not satisfy the requirement because it is impossible to know at the time of marriage the exact value of such a promise.

To the extent that any amount or property of the *mahr* remains unpaid or undelivered, it becomes a debt of the husband upon the death of either spouse.¹⁴ That debt is different from the wife's determinate share in her husband's estate, which is distributed only after all debts, including the remainder of the wife's *mahr*, are satisfied.

In this case, John has no right to be appalled at the notion of planning for divorce while planning for marriage. Indeed, Islamic law requires such planning in a marriage contract in order to protect both spouses from later problems and uncertainties. Under the Islamic approach, John also has no reason to worry about his financial investments. Deborah is not entitled to them, except to the extent promised by John in the marriage contract, and to the extent that Islamic law requires John to support her during their marriage. John is required to support Deborah in accordance with his means and her station. His refusal or failure to do so will affect negatively his rights within the family and Deborah's obligations toward him. Deborah also will become entitled to a variety of other remedies, including divorce. She has no reason to worry about her own financial investments because John is not entitled to any of her money, whatever its source, during her life. This conclusion is true despite the fact that Deborah is not a Muslim, because she properly entered into a valid and binding Islamic contract with John.¹⁵

13. See, e.g., AL-ZUHAYLI, *supra* note 1, at 263; see also 4 AL-JAZIRI, *supra* note 1, at 103.

14. See, e.g., ABU ZAHRAH, *supra* note 3, at 174; see also 1 ABD AL-AZIM SHARAF AL-DIN, *AHKAM AL-AHWAL AL-SHAKHSIYAH FI AL-SHARI'AH AL-ISLAMIYAH* 406-07 (Cairo 1987); MAHMASSANI, *supra* note 9, at 495.

15. See *supra* notes 1-5 and accompanying text.

If either John or Deborah is concerned about the amount the other may ultimately inherit, they should look to Islamic inheritance and estate planning laws. Although parties usually deal with such matters after marriage, through a will, John and Deborah may want to do so prior to marriage by signing collateral agreements.¹⁶ It is also possible that they use the second installment of the *mahr* as an additional vehicle for achieving the goals of their inheritance agreement. The extent to which they can do that, however, is beyond the scope of this Essay.¹⁷

Because both John and Deborah live in the United States, they are subject to the family laws of the applicable state. If they plan to have a civil marriage, their Islamic contract must precede the civil contract in order to have the force of a prenuptial agreement. Timing is, therefore, quite important in this case.

2. Religious Upbringing of the Children

The proposed agreement between John and Deborah regarding the religious upbringing of the children is void and unenforceable for several reasons. First, Islamic law charges Muslim parents with, among other things, the duty to provide their children with a proper Islamic upbringing.¹⁸ This is not a duty that they can avoid. From its inception, Islam permitted inter-faith marriages in an effort to build bridges with the two other Abrahamic faiths.¹⁹ Nevertheless, such bridge-building remains subject to Islamic law and is never in contravention of it. In the instant case, if John attempts to opt out of this requirement, he will be shirking a basic Islamic duty. Therefore, Muslim courts could not possibly legitimize, let alone honor, John's breach of such duty.

Once children come of age, the responsibility regarding their religious beliefs shifts from their parents to them. Thus, if the chil-

16. See *supra* notes 13-14 and accompanying text.

17. Some jurists have argued that Muslim and non-Muslim spouses may not inherit from each other. See, e.g., 6 IBN QUDAMAH, AL-MUGHNI 294-95 (Riyadh 1981) (thirteenth century). In such jurisdictions, John and Deborah need to make their arrangements early on. Any debt, however, owed by the husband to the wife must be paid. See sources cited *supra* note 14.

18. For a detailed discussion, see 1 ABD ALLAH NASEH 'ULWAN, TARBİYAT AL-AWLAD FI AL-ISLAM 148-61 (3d ed. Beirut 1981).

19. See ABU ZAHRAH, *supra* note 3, at 100; see also AL-ZUHAYLI, *supra* note 1, at 153; AL-JAZIRI, *supra* note 1, at 76.

dren later choose to adopt different religions, they are personally responsible to God for their own choices.²⁰

Further, the very notion of "splitting the children" goes against the Islamic concept of the child's right against her parents, not to mention the best interests of the child and of the family in general. What is at stake here is not a piece of property that may lend itself to mechanical division. Rather, the issue calls into question a set of beliefs and commitments, first to God and then to one's family and community. If John subscribes to Islamic religious beliefs and takes them seriously, he then has the obligation towards God and his children to raise the children in the best way he knows how; namely, in accordance with his Islamic beliefs.

In Islam, the family is viewed as the basic source of harmony and moral guidance.²¹ Raising two siblings in the same household in two different religions, determined as to each child by essentially flipping a coin, does not provide either child with sufficient moral guidance. Instead, it is likely to create confusion, pressure, and perhaps tension among siblings who may not understand, for example, why Amy can freely consume pork while her brother, Sam, may not do so; or why Amy is taught that marriage to her first cousin is tantamount to incest, while the father's family encourages Sam to marry his first cousin.

Additionally, the Muslim child will grow up in a society where his religious group is in the minority. His experiences at school, for example, will demand a great deal more resilience and patience than those of the average child. His sibling, on the other hand, will have a less demanding experience because she is more likely to fit in with the rest of the predominantly Judeo-Christian society, at least in matters of religion. Further, both siblings will have difficulty explaining the "split" to their friends, and will not escape it without emotional and spiritual costs. Consequently, this mechanical experience in *false* tolerance turns out to be a "cop out" by parents who did not have the foresight to think through their proposal in light of the best interests of their children.

Overall, the situation will cause the children to view religion as yet another group of preferences, somewhat akin to cultural preferences, devoid of transcendental truths and having only inter-sub-

20. See al-Hibri, *supra* note 8, at 5 n.15.

21. 'ULWAN, *supra* note 18, at 31; Azizah Y. al-Hibri, *Marriage Laws in Muslim Countries*, 4 INT'L REV. COMP. PUB. POL. 242 (1992).

jective value. This view is likely to result from the children's inability to appreciate philosophical differences among the three Abrahamic religions. Therefore, despite their parents' best intentions, such children may flounder spiritually in, or even totally reject, the very milieu from which they were supposed to have derived their early guidance and support.

It is for these reasons that parents must provide their children with solid guidance until they are old enough to properly understand questions in life and make their own choices. American family law lent its support to this point of view when many states decided not to honor agreements among parents relating to "splitting" the children along religious lines. Instead, these states chose to entrust the primary caretaker with the religious upbringing of the children, regardless of any prior agreements between the two parents.²² It would be advisable for John and Deborah to discuss these potential problems thoroughly prior to marriage.

Moreover, Helen's duplicitous behavior in this case only adds to the justice and moral correctness of Herbert's case.

VII. MARITAL FRAUD—FACT PATTERN

Alex and Phyllis have dated for four years. They have begun to think seriously about marriage. Throughout the years of dating, Phyllis has often expressed her desire to have a large family; her love of children is well-known. Alex has always agreed with her and apparently loves children as well.

Alex, however, is aware that, because of a childhood illness, he is sterile. He realizes that Phyllis' desire for a large family is so strong that she would probably not marry him if she knew he could not father children. He decides not to tell her, thinking that, once they are married, she will accept not having children or will be amenable to adoption.

After two years of marriage, Phyllis becomes concerned because she is not yet pregnant. After a thorough medical exam, the doctor tells her that nothing is physically wrong. She later insists that Alex make an appointment for a similar checkup, and Alex finally admits the truth. Phyllis is devastated by his deception. She returns to her parents' home and consults an attorney. Because both Alex and Phyllis are of your confession of faith, they request that you provide an *amicus curiae* brief for the court to consider.

A. Roman Catholic Response

MICHAEL R. MOODIE, S.J.

Apart from specific and rare exceptions, Catholic Church doctrine does not admit the possibility of divorce.¹ Consent to marry, once given, cannot be revoked; the resulting marriage is legally indissoluble. Because of this doctrine of indissolubility, the attention of canonists has historically focused upon the conditions necessary to give the binding consent necessary to enter marriage.

1. A word of clarification regarding Catholic doctrine is needed here. The Catholic Church teaches that marriage between two baptized Christians, whether Catholic, Protestant, Orthodox, etc., is a sacrament. A sacramental marriage, once consummated, can never be dissolved. Divorce, consequently, is impossible. The Catholic Church also teaches, however, that marriages between non-baptized persons, although intrinsically permanent, can be dissolved "in favor of the faith." Only the Church can dissolve these marriages, that is, grant a divorce. The Catholic Church does not recognize any other type of divorce, whether religious or civil, as dissolving an existing marriage bond.

which blood siblings are entitled, excluding certain rights such as inheritance rights.²

Scholars disagree on the scope of diseases and illnesses that constitute a bar to marriage. They agree, however, on two basic defects that make intercourse incomplete or impossible: (1) impotence, which includes, for example, the presence of an unusually small penis; and (2) the absence of a penis altogether. With few exceptions, scholars agree also on an additional defect: the lack of testicles.³ Such defects detract from the sexual enjoyment of the wife, a basic right of the woman in an Islamic marriage. These defects also contradict the basic goals of marriage, which include sexual enjoyment and procreation.

Islamic literature also briefly addresses the issue of sterility. The discussion of the issue is brief due to a previous absence of adequate medical technology for determining sterility with certainty. Still, in light of the Islamic principles and methodologies of *ijtihad*,⁴ it is possible to extrapolate a ruling on this matter based on all available information, including the treatment of analogous matters by Muslim scholars of various schools of *ijtihad*.

Therefore, it is important at this point to ask Phyllis and Alex about the school of Islamic thought to which they adhere or prefer, whether it be Shafi'i, Hanafi, Maliki, Hanbali, or Ja'fari, and then provide an analysis based on that school's rationale. Most likely, neither Alex nor Phyllis have thought much about this issue, although Muslims in certain geographical areas tend to identify themselves as adherents to one school of thought or another. In the United States, however, it is most likely that the attorney for each party will pick the school most sympathetic to his or her client.

2. Arguments Permitting Annulment—Different Islamic Schools of Thought

A major goal of Islamic marriage is procreation.⁵ A Muslim wife has the right to have children. This right is fundamental and is

2. See, e.g., AL-ZUHAYLI, *supra* note 1, at 129-41 (providing a detailed discussion of these issues).

3. For a thorough discussion of these matters, see AL-JAZIRI, *supra* note 1, *passim* (especially pp. 180-98).

4. For more on this theory and the place of *ijtihad* in Islam, see Azizah Y. al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 CASE W. RES. J. INT'L L. 1 (1992).

5. See, e.g., AL-ZUHAYLI, *supra* note 1, at 107, 517; 1 ABD AL-'AZIM SHARAF AL-DIN, *AHKAM AL-AHWAL AL-SHAKHSIYAH FI AL-SHARI'AH AL-ISLAMIYAH* 167 (3ded. Egypt 1987).

B. Islamic Response

AZIZAH Y. AL-HIBRI*

1. Introduction

Islamic law requires the satisfaction of certain initial conditions before a marriage contract is recognized as valid. Among these conditions are the willingness of the two parties to enter the marriage union voluntarily, and the absence of any bar to marriage. If these initial conditions are not satisfied, the marriage is generally held to be either void or voidable.¹

Bars to marriage range from familial factors, such as the existence of certain blood or milk relations between the contracting parties, to physical and medical factors, such as the existence of certain types of bodily defects, diseases or illnesses in either or both of the parties. An example of a milk relation barring marriage is one where the mother of the prospective spouse is found to have nursed the other prospective spouse in his or her childhood. This relationship would make the spouses "siblings-in-milk." Besides creating a permanent bar to their marriage, their status as "siblings" also entitles both of them to the full range of rights to

12. See *supra* note 9.

* For their valuable comments on earlier drafts of this essay, I would like to thank Professor Peter Swisher of the T.C. Williams School of Law, Dr. Fathi Osman, Resident Scholar at the Islamic Center of Southern California, and Dr. Hassan Hathout, Islamic scholar and member of the Islamic Center of Southern California.

1. The best treatises on this subject include: 4 ABD AL-RAHMAN AL-JAZIRI, *KITAB AL-FIQH 'ALA AL-MADHAHIB AL-ARBA'AH* (Beirut 1969) (1928); 7 WIHBAH AL-ZUHAYLI, *AL-FIQH AL-ISLAMI WA ADILLATUH* (Damascus 1984); 2 FADL IBN AL-HASAN AL-TABARSI, *AL-MU'TALAF MIN AL-MUKHTALAF BAYN A'IMMAT AL-SALAF* (Qumm 1990) (twelfth century).

generally recognized in other areas of Islamic law as well. For example, most scholars would argue that, while Muslims may practice *coitus interruptus* and other forms of birth control, such practices may not be adopted by the husband without the consent of the wife; this is because such practices deny her both the right to have a child and the right to undiminished sexual enjoyment.⁶

As noted earlier, the three male defects recognized by jurists as voiding a marriage do not expressly include sterility. Instead, discussion of sterility has been traditionally replaced with an analysis of such lower-threshold issues as the inability to ejaculate, a topic usually treated as part of the discussion on eunuchs. These lower-threshold issues were a reflection of the dominant concerns at the time. Significantly, these issues also recognized the centrality of sexual intimacy and procreation in ordinary family life.

Directly on point, however, is the story of Khalifah (Caliph) Omar Ibn al-Khattab. Khalifah Omar was asked by a man who believed himself to be sterile whether the man was obligated to reveal that defect to his prospective bride. Khalifah Omar advised the man to inform his prospective bride of his condition so that she could make an informed choice about marrying him.⁷ This story provides a very important precedent in the literature on such matters. Ibn al-Qayyim, a fourteenth century Muslim scholar, used this story to argue that a party may choose to end a marriage whenever the other party has any defect whatsoever that is repugnant to the first party, which defect was not revealed to the first party prior to marriage.⁸ Malikis, on the other hand, recognize the wife's right to annul her marriage from a eunuch if he cannot ejaculate, even if he can still have an erection.⁹ Clearly, therefore, ejaculation is an important function of sexual enjoyment and procreation, according to Malikis. Indeed, both are widely recognized as basic goals in marriage.

Hanbalis, however, are clearer on this point. Where the man was a eunuch prior to marriage, and the wife has no notice of his defect, Hanbalis argue that the wife has the right to annul the mar-

6. See AZIZAH Y. AL-HIBRI, *Family Planning and Islamic Jurisprudence*, in RELIGIOUS AND ETHICAL PERSPECTIVES ON POPULATION ISSUES 2-11 (1993). See also AL-TABARSI, *supra* note 1, at 154; ABD AL-RAHIM OMRAN, *FAMILY PLANNING IN THE LEGACY OF ISLAM* 152-67 (1992).

7. AL-ZUHAYLI, *supra* note 1, at 519; SHARAF AL-DIN, *supra* note 5, at 167.

8. AL-ZUHAYLI, *supra* note 1, at 519.

9. AL-JAZIRI, *supra* note 1, at 183.

riage, regardless of whether the husband is capable of ejaculation or not.¹⁰ The reason given is that such a defect detracts from the wife's sexual enjoyment. Thus, mere intercourse is not sufficient in the Hanbali view to preserve the marriage. Full enjoyment by the wife is a required aspect of intercourse. Indeed, Hanbalis argue that any defect that prevents the full and perfect realization of the goals of marriage should be accepted as a legitimate basis for annulment. Based on this Hanbali *ijtihad*, we may extrapolate that the wife's intercourse with a sterile husband may, depending on the woman, detract from the woman's full enjoyment of intercourse and, thus, provide a basis for annulment. Therefore, a wife's inability to end such a marriage would contradict one of the basic goals of marriage in Islamic law.

Shafi'is go even further in asserting the Muslim woman's right to sexual enjoyment. Shafi'is give her the right to annul the marriage in the case where the husband has no penis, even if she was the one who severed it.¹¹

One reason for stressing the wife's right to sexual enjoyment is that it protects her from adultery. Various schools have held that, if the marriage did not provide her with a satisfactory sexual relationship, she may become vulnerable to the advances of others. Therefore, it is the husband's responsibility to see to it that his wife is sexually satisfied.¹²

In the instant case, Phyllis highly values procreation and has stated that fact repeatedly. Alex, however, is incapable of fulfilling her legitimate desire for children. Furthermore, he did not inform her of his defect prior to the marriage.¹³ In light of the preponderance of evidence supporting the wife's right to annul in such circumstances, and in light of the very clear and important precedent of Khalifah Omar, Phyllis must be given the right to annul the marriage.

10. *Id.* at 196.

11. *Id.* at 194.

12. See, e.g., AL-ZUHAYLI, *supra* note 1, at 106-07.

13. Dr. Hassan Hathout offers another argument for annulment. According to Dr. Hathout, the lack of notice was fraudulent. Therefore, because the Islamic marriage contract is subject to contract law like any other contract, establishing fraud here provides legitimate grounds for "rescission." There is some support for this view in AL-JAZIRI, *supra* note 1, at 198; AL-TABARSI, *supra* note 1, at 149.

3. Arguments Against Annulment

While all Muslims believe in a woman's right to sexual enjoyment, it is not clear that sterility detracts significantly from it. As for procreation, there is no such thing as a sterile person, because God, not modern technology, determines sterility. To explain, the *Qur'an* clearly tells the story of Abraham and Sarah. Sarah was not only considered sterile, but she was also elderly. Nevertheless, God informed Abraham that he would give them children, and He did.¹⁴ For God, nothing is too difficult or impossible, regardless of what our technology tells us. Further, Islamic literature has established that a bride may live with an impotent husband (*anin*) for a full year without losing the right to request an annulment.¹⁵ The wait was not viewed as a waiver because jurists wanted to give the groom a fair chance to recover from his condition.

In the case of sterility, the situation is somewhat analogous. A husband may succeed in impregnating his wife in their later years. This is especially true in today's world of ever-developing technology. For that reason, a husband's fair chance to vindicate himself should not be limited to one year. Finally, if God wanted the wife to have children, she would, regardless of the husband's purported condition.

Hanafis, in particular, adamantly limit the defects permitting annulment to the three listed at the beginning of this essay. They base this position on the view that marriage is no less sacred than other familial bonds.¹⁶ Hence, if either one of the spouses has a defect other than the three listed, the unafflicted spouse must help the other spouse by providing all the necessary support that would be provided for any other member of the family.

If this seems unusually harsh, Hanafis note that a prospective spouse is responsible for thoroughly investigating the other prospective spouse prior to marriage. That he or she did not adequately do so is not a good reason to permit annulment. In the present case, Phyllis had adequate opportunity to discover Alex's infertility. Now that she has married him, she should help him, not leave him.¹⁷ In fact, Phyllis had a better chance in our modern

14. QUR'AN XI:69-74 (A. Yusuf Ali trans., 1983); see also *id.* XIX:1-15 (recounting the story of Zakariyah and his old wife).

15. See, e.g., AL-JAZIRI, *supra* note 1, at 186, 191, 195-96.

16. See *id.* at 180.

17. *Id.*

technological society of ascertaining Alex's fertility than women had in earlier societies. For example, she could have insisted on having him medically tested prior to marriage. In a modern Islamic state, the state may *require* such a test, including disclosure of the results to the prospective spouse, as a prerequisite for marriage. Such specific laws that supplement laws provided in the *Qur'an* are acceptable in Islamic law as a proper part of *Shari'ah* in that state. They may differ from those adopted in other Islamic states due to the states' different customs and/or needs.

As a condition of the marriage, Phyllis also had the right to specify in the marriage contract that Alex must be free from any defects. Phyllis did not include such a condition in her contract with Alex and, thus, waived her rights regarding this matter. She cannot, therefore, later use Alex's defect as a basis for annulment.

This position is not new. Hanafis, for example, recognize the legitimacy of including specific conditions in the marriage contract. Where a condition is violated, the affected party has the right to an annulment.¹⁸ It is also worth noting that Hanafis do not recognize the woman's right to annulment where the husband is a eunuch capable of an erection, even if he is not capable of ejaculation.¹⁹ This shows that some scholars do not view procreation as an essential part of the marriage or its goals. Indeed, some of them believe that penetration, even without ejaculation, is sufficient to sustain the legality of the marriage.²⁰

If a wife does not want to continue in such a marriage, she may choose divorce, which is permitted in Islamic law.²¹ The wife may then marry another, this time with a more detailed marriage contract that fully specifies her conditions for marriage.

4. Conclusion

While both arguments are compelling, the arguments in favor of annulment more accurately reflect the Islamic position. Here, the case is clearly one of marriage fraud. Divorce is much more difficult than annulment, though the wife may be in a better finan-

18. For a more detailed discussion of the validity of conditions in the marriage contract, see Azizah Y. al-Hibri, *Marriage Laws in Muslim Countries*, 4 INT'L REV. COMP. PUB. POL. 227-44 (1992).

19. See AL-JAZIRI, *supra* note 1, at 192. See also *supra* notes 9-10 and accompanying text.

20. See AL-TABARSI, *supra* note 1, at 153.

21. Certain scholars have relied on this fact to deny annulment. See *id.* at 149.

cial position under the latter. The argument that God can do the impossible provides a slippery slope that most scholars would not approve of; for example, the argument could later be used to deny other well-established Islamic rights like those of inheritance. The argument, thus, would be that "if God wanted to give someone money, God would have done so anyway." In short, Islamic courts are charged with the responsibility of applying Islamic law carefully and vigorously and are not entitled to vaguely speculate regarding God's will. Phyllis should, therefore, be permitted to annul her marriage to Alex.